

**200 KAR 12:030. Computing compensation due a state employee after adjudicated penalization.**

RELATES TO: KRS Chapter 18A

STATUTORY AUTHORITY: KRS 18A.105

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation repeals 200 KAR 12:010, relating to the calculation of compensation due a state employee following the Personnel Board's or a court's adjudication of an appealed personnel action. This administrative regulation also establishes a modified procedure for calculating the foregoing compensation. Furthermore, this administrative regulation repeals 200 KAR 6:035, pertaining to the leasing of real property on behalf of various state agencies. The provisions of that administrative regulation have been codified under KRS 56.830.

Section 1. Definitions. The following terms, words or phrases shall have the meaning assigned herein, unless the context indicates otherwise:

(1) "Adjudicated penalization" shall include, but not be limited to, the demotion, dismissal, suspension, fine or any other personnel action for which, after appeal, an employee is ordered either by the Personnel Board or by a court of competent jurisdiction to be reinstated to his former position or like position without loss of pay.

(2) "Corrective dates or corrective period" are synonymous terms for the period between the date of adjudicated penalization or removal from the payroll and the date of reinstatement to a former position or a position of like status and pay as provided by KRS 18A.095.

(3) "Gross pay" means the gross amount of pay which an employee would have earned during the corrective period.

Section 2. Time of Payment. When the Personnel Board or a court of competent jurisdiction has ordered an employee reinstated to his former position or a like position without loss of pay, the appointing authority shall within a reasonable time thereafter cause the amount of compensation to which such employee is entitled for the corrective period to be calculated as provided in this administrative regulation.

Section 3. Calculation of Gross Pay. (1) Calculation of gross pay shall be limited to the amount of gross salary or wages which would have been earned by the employee during the corrective period. If the employee dies or becomes permanently and totally disabled for the performance of duties of the position to which he is entitled to be reinstated prior to his reinstatement, the date of death or the date of total disability shall be deemed to be the last date to which such employee shall be entitled to be paid. In the case of a permanently and totally disabled employee, the last date may be extended by the number of days of sick or annual leave days accrued and to which he is entitled as provided in Section 7 of this administrative regulation.

(2) Gross pay for a full-time employee shall be based on the following:

(a) The grade, classification and monthly pay rate in effect at the time of the adjudicated penalization, plus;

(b) Changes in classification in employee's position or the pay rate by reason of wage surveys, administrative action or legislation;

(c) Allowable increments for which the employee could have been considered eligible by the appointing authority during the corrective period;

(d) Any other changes which would affect the amount of compensation which the employee would otherwise have received if the adjudicated penalization had not occurred.

(3) Part-time employees shall be entitled to all pay increases applicable to full-time employees as

set out in paragraph (2) of this subsection, if such employee would otherwise have been eligible to receive them during the corrective period under the administrative regulations of the Department of Personnel.

(4) Gross pay for a part-time employee shall be determined by one (1) of the following methods:

(a) Averaging the number of hours worked by other employees of the agency in the same locality under the same type of appointment, performing the same kind of work that the employee would have performed during the corrective period;

(b) Averaging the hours per week the employee worked during the calendar year preceding the adjudicated penalization.

(5) An employee demoted in grade, and consequently, ordered reinstated to his former position or to a position of like status and pay pursuant to KRS 18A.095, shall be eligible to be paid the difference in salary that he would have earned at his former pay rate and the salary that he earned at the pay rate to which he was demoted for all the entire period of his demotion.

Section 4. Retirement Calculations. (1) Employer and employee contributions to the Kentucky Employees' Retirement System shall be calculated on the basis of the employee's gross pay. Reductions in the amount due the retirement system shall be made if a portion of these costs were paid during the corrective period, as in the case of a demoted employee.

(2) An employee ordered reinstated by the Personnel Board or a court of competent jurisdiction and who has previously withdrawn his contributions to the retirement system, may elect after reinstatement, to repay the amount withdrawn by deduction from any compensation due him; or, if no compensation is due the employee, then the employee may pay this amount by check. The appointing authority shall in any event pay the employer's share of contributions to the retirement system plus interest at the current legal rate on the employer-employee contributions provided that the employer's share has not previously been paid to the system during the corrective period.

Section 5. Setoff Income. (1) Except as provided in this subsection, the employee's gross earnings from other employment during the corrective period, shall be setoff against his gross pay as determined in Section 3 of this administrative regulation, to the extent that this income was earned in a number of hours not in excess of the hours the employee would have worked prior to the adjudicated penalization. Furthermore, the income earned during the corrective period shall not be setoff against an employee's gross earnings from other employment, if the income was being earned prior to the corrective period.

(2) In order to determine an employee's gross earnings from other employment during the corrective period, the employee shall furnish the appointing authority with an employee's affidavit, on that form to be provided by the Department of Personnel stating the amounts and sources of all his income during the corrective period.

(3) The income, property or assets of the spouse of the employee shall not be considered in determining the amount of the employee's income to be setoff against the employee's gross pay.

Section 6. Deductions. The appointing authority shall make deductions for the following:

(a) Federal and state income taxes;

(b) Any applicable local payroll and occupational license taxes;

(c) Social Security taxes required by federal and state laws and the applicable regulations of the federal Internal Revenue Service, the Kentucky Revenue Cabinet, and Social Security Administration; and

(d) The amount required to reimburse the state unemployment fund for those unemployment compensation benefits received by the employee during the corrective period.

Section 7. Annual and Sick Leave. (1) The appointing authority shall calculate the number of days of annual and sick leave that the employee would have accumulated during the corrective period.

(2) When an employee has been ordered reinstated to his former position or a like position, all annual leave and sick leave and compensatory time that the employee accrued and for which he was not paid at the time of dismissal, shall be reinstated.

(3) An employee who does not desire to be reinstated, but who seeks only compensation, may be paid for annual leave time which would have accrued to him during the corrective period based on the Department of Personnel administrative regulations governing the accumulation of annual leave time in effect during the corrective period. (15 Ky.R. 1986; Am. 2149; eff. 3-8-89.)